

IAT Rules for Governments

Understanding how “International ACH Transactions” rules apply to Governments

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What are the IAT Rules?

- A subset of the National Automated Clearing House Association (NACHA) Operating Rules
- NACHA Operating Rules:
 - Govern how ACH transactions are originated through the banking channels
 - Apply to banks and originating companies (including governments)
 - Banks obligate government customers to adhere to the Operating Rules through ACH Agreements establishing the origination services
 - Operating Rules not publicly available – Obtain from your bank or purchase
- IAT Rules are a result of NACHA amending the Operating Rules to address requirements of Office of Foreign Assets Control (OFAC)
- IAT Rules (NACHA Amendment) became effective September 18, 2009
- While IAT is acronym for “International ACH Transactions,” the rules actually apply to ACH transactions remitted to a domestic bank account
- The Originating Company acknowledges that they may not initiate ACH entries that violate the laws of the United States



Office of Foreign Assets Control (OFAC)

- Part of the US Department of Treasury
- Enforces economic and trade sanctions against targeted foreign countries, terrorists, international narcotics traffickers, those engaged in proliferation of weapons of mass destruction, etc.
- Has authority to impose controls on transactions and to freeze assets
- Maintains a “Specially Designated Nationals (SDN) List”
 - Basically a “Black List”
 - Prohibits all US citizens from conducting business with those on list
- Banks have generally been responsible for screening payments (e.g., wire transfers) to ensure funds are not transmitted to a party on the SDN List
- IAT Rules designed to involve companies and governments in the process by assisting the banks in performing this screening process for ACH
- OFAC requirements apply to all US citizens, companies, and entities (e.g., governments) - not just banks



Potential for Fines and Penalties

▪ NACHA Imposed

- Operating Rules provide for fines to banks (\$1,000 - \$5,000) - Unlikely
- Any fine levied against bank could potentially be pass on to government

▪ OFAC Imposed

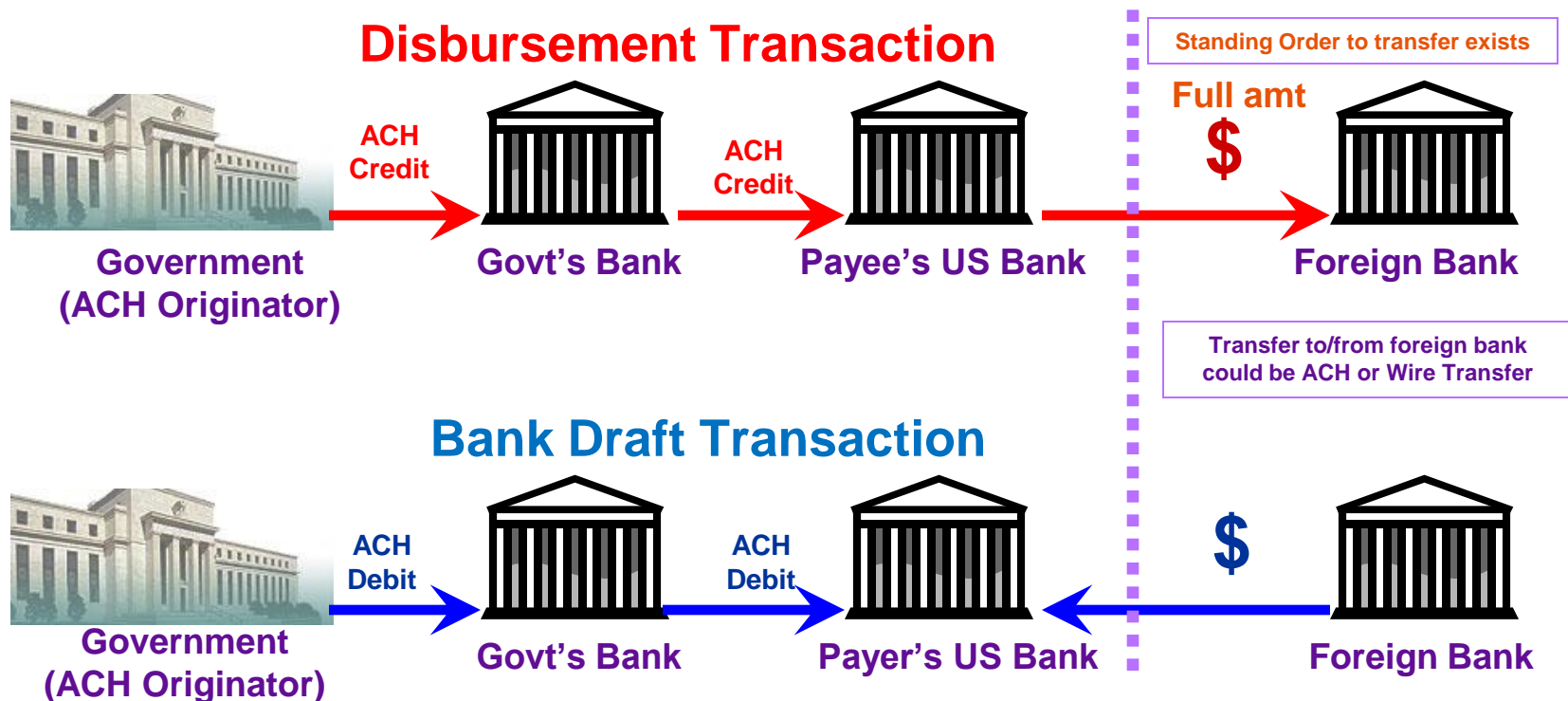
- Violation of US Law (\$10,000 - \$10,000,000) per occurrence
- Could be levied against bank or directly against government
- Recent fines listed on OFAC's website
- 10 – 30 years jail time possible – criminal and civil
- Provides “Hold Harmless” protection for actions or omissions done “in good faith” in administering federal requirements

▪ **Some published information over-emphasizes potential for fines (silent on “hold harmless” protection)**

▪ **Demonstrates importance of acting “in good faith” to adhere to IAT Rules**

What is an IAT?

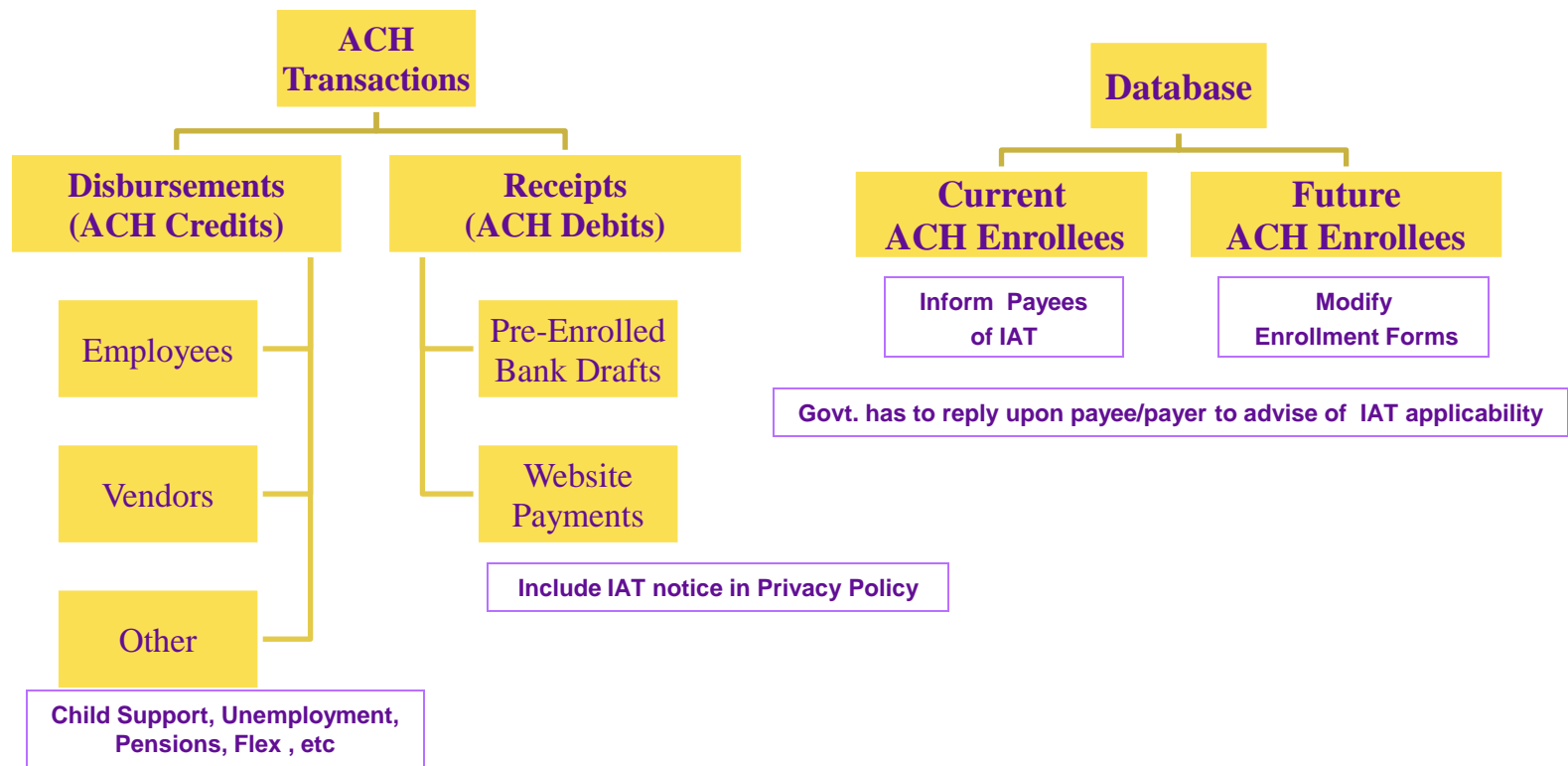
- An electronic payment originated through the Automated Clearing House Association that is either part of a set of transactions where:
 - The funds associated with the payment are remitted to an off-shore bank, or
 - The source of the funds supporting the payment are from an off-shore bank





IAT Applicability to Databases

- IAT only applies to ACH transactions, not paper check transactions
- IAT applies to both disbursements (ACH credits) **and** collections (ACH debits)
- Procedures should address current enrollees **and** future enrollees





Obstacles to Compliance

- **Lack of knowledge regarding a payee's arrangements with their bank**
 - Government is not in the position to know if “standing order” exists
 - Government does not know source of funds (bank drafts)
- **Premise of rules are that all parties should “know their customer”**
 - This puts government in position of inquiring of a payee / payer as to what they do with their money, or where they get their money
 - Government must consider privacy rules as they conduct inquiring process
- **Government's compliance is dependent heavily upon the payee or payer informing the government of the disposition or source of payments**
- **Misunderstanding early on that rules actually do apply to payments made initially to a domestic bank account (some still are misinformed)**
- **Most educational info on IAT has been geared toward the banks, not originators, with banks being relied upon to educate their originators**
- **Government awareness of the IAT rules is very sparse, as information from banking industry has sometimes been vague and open for interpretation**
- **Banks are limited in how much guidance they can give, as they are reluctant to provide OFAC compliance and due diligence guidance**



How to Comply With IAT Rules

- IAT Rules define what an IAT is, but does not specify compliance actions – other than to label such transactions with a special entry class code (IAT)
- OFAC law provides “hold harmless” protection if compliance actions are taken “in good faith.”
- **Good Faith generally involves:**
 - Following commercially reasonable practices
 - Incorporating processes followed by peer groups
- **Understand what IAT is and determine how it applies to you**
 - Disbursements (Direct Deposit)
 - Receipts (Bank Drafts) (Receipt of ACH credits as IATs from payers)
- **Develop policies and procedures that support your “good faith efforts,” incorporating “due diligence” actions**
 - Current ACH Enrollees
 - Future ACH Enrollees
- **Implement policies and procedures developed**



Four Policy Decisions

- **How to pay a payee once identified as an IAT payee? – Two options**
 - Discontinue paying by ACH, and pay by check instead
 - Make arrangements to generate ACH file in the special IAT format
[Consider higher cost of an IAT (addendum records) and volume]
[If pay by check, ensure payee is not on OFAC's SDN List]
- **How to classify a payee that is a “potential” IAT payee?**
 - Funds for an IAT may not be available at the “opening of banking day”
 - Therefore, flagging a payment as an IAT, when it really is not one, could adversely affect the payee
 - Justifiable for policy for employees to differ from policy for vendors
- **What criteria (indicators) to use to determine a “potential” IAT payee?**
 - Foreign address?
 - Non-alien resident?
 - Non-domestic incorporated company?
- **How to handle currently enrolled ACH payees vs. future enrolled payees?**



Minimum Level of Compliance

- ***Develop an IAT policy that:***
 - Indicates government's intent to adhere to all US Law and the IAT Rules
 - Specifies "due diligence" actions to support "good faith" efforts
- **Inform all ACH payees/payers (employees and vendors) of the IAT Rules**
 - Advise of government's intent to adhere to the US Law and the IAT Rules
 - Advise of payee's/payer's responsibility to assist in compliance
- **Should you learn that a payee in your database should be classified as an IAT payee, pay them appropriately:**
 - Pay by ACH using the special IAT format
 - Pay by **check***
- **Incorporate IAT info into website's Privacy Statement (on-line payments)**

* While not subject to IAT rules, paying by check (or wire transfer) to a vendor on OFAC's SDN list could be considered an OFAC violation



Recommended Best Practices

- For a payee to be designated as an “IAT payee,” there should be evidence or existing reasonable conditions for the payee to be so designated; Otherwise, presumption is that the payee is a non-IAT payee
- Policy could recognize potential higher risk for corporate payees (e.g., vendors) than for consumer payees (e.g., vendors)
 - Employees (e.g., payroll) - there should be “definitive evidence”
 - Vendors - there may be “established conditions”
- When one or more conditions exist that cause the agency to reasonably consider a payee as a potential IAT payee, the government should make an inquiry of the payee, particularly if the payee is a vendor
- If IAT-formatted files will be originated, include a flag in payee database to identify payees that should be paid with the special IAT label
- Modify “ACH Authorization / Enrollment forms” to allow payee / payer to affirm if their payments are subject to:
 - Being transferred in full to a foreign bank (direct deposits)
 - Funded from a foreign bank (bank drafts)
- Include IAT Rules advisement in vendor procurement process (e.g., RFPs)



IAT Rules Resources

Office of Foreign Assets Control

<http://www.ustreas.gov/offices/enforcement/ofac/>

Federal Reserve Bank

http://www.frb services.org/eventseducation/education/fedach_iat_resource_center.html

National Automated Clearing House Association

http://www.nacha.org/IAT_Industry_Information/

North Carolina Office of the State Controller

http://www.osc.nc.gov/SECP/SECP_IAT_Rules.html

Questions regarding contents in this presentation may be submitted to:

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Disclaimer:

You are advised to consult your counsel when implementing IAT rules and OFAC due diligence requirements for your government.